

## **REMARKS**

Applicants thank the Examiner for his careful examination of the application. Reconsideration and allowance of the application, as amended, is respectfully requested. Claims 1-31 remain pending in the application.

Claims 1, 12 and 31 have been amended to delete the word “approximately”.

### **I. Rejections under 35 U.S.C. § 112, Second paragraph**

Claims 1, 12 and 31 have been rejected on the basis that the claims are indefinite in that they fail to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner has identified the word “approximately” as indefinite. Applicant has amended Claims 1, 12 and 31 to delete the indefinite terms, although Applicant does not believe such terms were indefinite.

### **II. Claim Rejections Under 35 U.S.C. § 102(e)**

Claims 1-29 have been rejected as being anticipated by *Ahluwalia*. The Examiner states that *Ahluwalia* teaches all the features of the claims, particularly, a buyer, broker and retailer that interact over the Internet and means for purchasing and tracking the buyers purchased product. See Office Action, page 4.

#### ***Ahluwalia* does not teach every claim limitation of claims 1-29**

Applicant respectfully traverses these rejections on the basis that the Examiner has failed to establish that every element of the rejected claims is present in the *Ahluwalia* reference. A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference. M.P.E.P § 2131 citing to *Verdegaal Bros. v. Union Oil Co. of California*, 814, F. 2d 628, 631 (Fed. Cir. 1987). It is well settled that when rejecting claims under 35 U.S.C. §102, an Examiner must find that a single prior art reference discloses each and every element of the challenged claim. *In re Donahue*, 766 F.2d 531 (Fed. Cir. 1985); *Getcher v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997).

The invention described by *Ahluwalia* is an online communications system for reporting information related to online ordering and tracking. The communication system comprises an order message having order information, order status, and dealer action information. The system of *Ahluwalia* provides the availability of status and tracking information, prior to placement of an order by a consumer. *Ahluwalia* does not describe every element found in claim 1, the independent claim from which claims 2-29 depend. Identified below are the specific subsets of Claim 1 along with the elements not found in *Ahluwalia*.

Claim 1 (a): *Ahluwalia* does not describe designating one or more geographic club member areas, as required in Claim 1. Nowhere in *Ahluwalia* does it teach of a geographic area limitation, nor does it disclose a club, whereby the club is limited to a particular geographic area.

Claim 1(b): *Ahluwalia* does not describe associating with each club area one or more consumer members who reside within the club member area and who pay a fee to the club. *Ahluwalia* does not teach a fee or consumer members within a given club member area.

Claim 1(c): *Ahluwalia* does not describe associating with each club member area one or more buyer members who must agree to work within the club member area and agree to pay a membership fee to the club. *Ahluwalia* does not teach buyer members who purchase and deliver products within a club member area, nor does it teach a fee to be paid by buyer members.

Claim 1(d): *Ahluwalia* does not describe associating with each club member area one or more retailer members who must offer products for sale within the club member area and who must agree to pay a membership fee to the club. As noted above, *Ahluwalia* does not teach a club member area or a membership fee.

Claim 1(e): *Ahluwalia* does not teach providing means through an electronic

communications network for consumer members, buyer members and retailer members to access a club website specific to the club member area and to interact with the club website. *Ahluwalia* does not teach a club member area, nor a website specific to a club member area.

Claim 1(f): *Ahluwalia* does not teach providing means through an electronic communications network for consumer members, buyer members and retailer members to each access an individual member web page located on the club website and personalized using parameters specific to each such consumer member, buyer member and retailer member. *Ahluwalia* does not teach of buyer members, nor individual member web pages that may be customized.

Claim 1(g): *Ahluwalia* does not describe providing means through software programming for retailer members to offer one or more products for sale on the club website to consumer members. *Ahluwalia* does not describe a club website.

Claim 1(i): *Ahluwalia* does not provide means though software programming for buyer members to be notified of purchases made by consumer members and to offer to retailer members to fulfill the purchases. No where in *Ahluwalia* does it describe software programming that notifies buyer members of purchases made by consumers. *Ahluwalia* does not include buyer members. *Ahluwalia* does not offer retail members to fulfill the purchases of customers, rather *Ahluwalia* allows consumers to search the inventory of cars and tag new cars in production or at dealerships.

Claim 1(j): *Ahluwalia* does not describe fulfilling purchases by having buyer members buy products from retailer members, deliver products to consumer members to a location within the club member area within thirty (30) minutes of purchase, and collect a payment from consumer members. *Ahluwalia* does not employ buyer members who are responsible for buying products ordered from consumer. *Ahluwalia* does not employ buyer members who deliver products to consumers within a club member area within 30 minutes. *Ahluwalia* does not use buyer members or the like to collect payment from

consumer members.

The examples provided in *Ahluwalia* purport to teach a web-based custom vehicle ordering and tracking system. See Col. 10, lines 50-55. The invention disclosed in the present application is distinguishable from *Ahluwalia* for several reasons which are noted above. Most significantly, *Ahluwalia* does not teach a buyer member who purchases the consumer's goods and delivers the goods within 30 minutes, nor a club member area which serves to geographically limit the membership to within the geographic limitations, nor a fee to be paid for membership in the club by the buyer, consumer and retailer.

*Ahluwalia* does not disclose every element of the challenged independent claim 1 and therefore does not anticipate claim 1 of the present invention under 35 U.S.C. §102(e). Similarly, dependent claims 2-29 are not anticipated by *Ahluwalia* under 35 U.S.C. §102(e) for failure to disclose each and every element of the challenged claims, as a dependent claim shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. M.P.E.P. §608.01(n).

### **III. Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 30 and 31 have been rejected as being unpatentable over U.S. Patent No. 6,728,685 to *Ahluwalia* in view of official notice of tracking products wirelessly using GPS systems. Applicant respectfully traverses this rejection.

#### **Claim 31 was previously deemed to contain allowable subject matter**

In the previous Office Action of February 9, 2005, Claim 31 was noted as containing allowable subject matter if rewritten or amended to overcome the §112 rejections, claim objections and drawing corrections. See page 25 of Office Action dated February 9, 2005. Applicant responded to the previous Office Action and amended Claim 31 to overcome all the Examiner's rejections. Even in light of the statement that Claim 31 contained allowable subject matter, in the present Office Action, the Examiner has rejected Claim 31. Applicant acknowledges that the current Examiner did not issue the previous Office Action. In fact, there have been a total of three Office Actions on this case, all from different examiners. Each Examiner after the first, has performed a new search and issued rejections based upon new

grounds and new art. This has proven frustrating to the Applicant and only delayed the issuance of the patent.

Applicant believes that the rejection of Claim 31 after it was deemed to contain allowable subject matter is in error. "A claim noted as allowable shall thereafter be rejected only after the proposed rejection has been submitted to the primary examiner for consideration of all the facts and approval of the proposed action. Great care should be exercised in authorizing such a rejection." M.P.E.P. § 706.04. Moreover, "[f]ull faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the view point of a previous examiner, or make a new search in the mere hope of finding something." M.P.E.P. § 706.04.

In the present Office Action, the Examiner did not even withdraw the allowance of Claim 31 based upon the new grounds of rejection. "Because it is unusual to reject a previously allowed claim, the examiner should point out in his or her office action that the claim now being rejected was previously allowed." M.P.E.P. § 706.04. Applicant would like to draw the Examiner's attention to the previous statement regarding allowable subject matter and request reconsideration of the new rejection of Claim 31.

**The Examiner has failed to establish that *Ahluwalia* and Official Notice of a GPS system teach or suggest all the limitations of Independent Claim 31 or Claim 30**

The Examiner has failed to establish that the combination of *Ahluwalia* and Official Notice of a GPS system teach or suggest all of the limitations of claims 30 or 31. As stated in 35 U.S.C. §103(a), a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art to which said subject matter pertains. A rejection under 35 U.S.C. §103(a) is authorized whereby it is necessary to combine a single reference with one or more other references to meet the rejected claim. M.P.E.P. §706.02(j). Furthermore, the Examiner must establish a *prima facie* case of obviousness whereby each of three criteria must be met:

1. There must be a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
2. There must be a reasonable expectation of success.
3. The prior art reference must teach or suggest all the claim limitations.

*In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993); M.P.E.P. §2143.

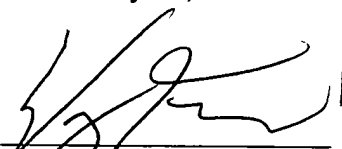
Claims 30 and 31 each incorporate all of the limitations contained in claim 1. As noted above, *Ahluwalia* fails to teach each and every element of claim 1 and likewise fails to teach or suggest each and every element of claim 30 and 31. The combination of *Ahluwalia* and Official Notice of a GPS system fails to fill in the missing elements which are not taught or suggested by *Ahluwalia*. The combination of the references fails to teach or suggest some of the most significant elements of Claims 30 and 31, particularly, a club member area which serves to geographically limit the membership to within the geographic limitations, a buyer member who purchases the consumer's goods and delivers the goods within 30 minutes, or a fee to be paid for membership in the club by the buyer, consumer and retailer. Accordingly, the combination of *Ahluwalia* and Official Notice of a GPS system does not disclose each and every element of the challenged independent claim 31, nor dependant claim 30, and therefore does not make claim 30 or 31 of the present invention obvious under 35 U.S.C. §103(a).

**CONCLUSION**

Applicants submit that this Amendment and Response, if entered, places Claims 1-31 in a condition for allowance and respectfully requests that such action be taken by the Examiner at this time.

Should a telephone conference be necessary to assist the Examiner's evaluation of this application, a telephone call to the undersigned at (305) 448-7089 is respectfully solicited.

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